

[Submitting Counsel on Signature Page]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE JUUL LABS, INC.,  
MARKETING, SALES PRACTICES,  
AND PRODUCTS LIABILITY  
LITIGATION

Case No. 3:19-md-02913-WHO

**PLAINTIFFS' MOTION TO MODIFY CMO  
5, CMO 5(A), AND THE ORDER  
APPOINTING COMMON BENEFIT  
SPECIAL MASTER**

This Document Relates to:

All Cases

**Judge: Hon. William H. Orrick**  
**Date: October 30, 2024**  
**Time: 2:00 PM**  
**Ctrm.: 2 (by Zoom)**

**NOTICE OF MOTION AND MOTION**

**PLEASE TAKE NOTICE** that on October 30, 2024, at 2:00 PM, in Courtroom 2 of this Court, located at 450 Golden Gate Avenue, 17th Floor, San Francisco, California, Plaintiffs will and hereby do move for an order modifying CMO 5, CMO 5(A), and the Order Appointing Common Benefit Special Master.

1 **I. INTRODUCTION**

2 This MDL is nearly complete. Global settlements have been reached with all Defendants  
3 on behalf of all Plaintiff groups. Co-Lead Counsel, Liaison Counsel, and Plaintiffs' Steering  
4 Committee still have work to do in administering the settlements for the next few years. But the  
5 ongoing common benefit time spent and expenses incurred have been dramatically reduced. For  
6 that reason, it makes sense to modify and streamline the procedures the Court established for the  
7 reporting of time and expenses. Specifically, Plaintiffs request that the Court modify CMO 5  
8 (ECF 352, 381, 1202, 2307), CMO 5(A) (ECF 586), and the Order Appointing Common Benefit  
9 Special Master (ECF 680) to modify counsel's ongoing obligation to report common benefit time  
10 and expenses, as well as the procedure for auditing and reporting of those time and expenses.

11 **II. BACKGROUND**

12 On January 13, 2020, the Court entered CMO 5: Common Benefit Order – Timekeeping  
13 and Expenses Protocol. ECF 352. That order provided guidelines for common benefit time and  
14 expenses in this MDL, and required regular reporting of time and expenses to Plaintiffs' Co-Lead  
15 Counsel and to the Court. The Court later modified CMO 5 three times. ECF 381, 1202, 2307.  
16 CMO 5 anticipated that the Court would “appoint a Special Master to assist it in reviewing and  
17 auditing the fees and expenses submitted. ECF 352 at 2.

18 On May 27, 2020, the Court entered CMO 5(A): Establishing a Common Benefit Fee and  
19 Expense Fund. ECF 586. In that order, the Court established a system of assessments on  
20 settlements and recoveries. The Court also appointed Judge Andler as Common Benefit Special  
21 Master “to audit reported common benefit time and costs, and to resolve any common benefit  
22 disputes that may arise between any parties authorized to submit common benefit time or  
23 expenses.” *Id.* at 7-8.

24 On June 19, 2020, the Court issued an order under Federal Rule of Civil Procedure 53  
25 prescribing Judge Andler's duties. ECF 680. The Court required Judge Andler to audit common  
26 benefit time and expenses and to report her findings to the Court on a regular basis. *Id.*

27 **III. ARGUMENT**

28 At this point in the MDL, the limited work being done (primarily by Co-Lead Counsel)

1 and expenses incurred do not justify the costs associated with the auditing of time and expenses  
2 by Judge Andler and the regular, formal reporting to the Court.

3 The ongoing reporting of time has limited utility. The Court has already approved fee  
4 awards under Federal Rule of Civil Procedure 23(h) for both the JLI and Altria class settlements,  
5 and approved allocations of fees in connection with all four JLI settlements and three of the Altria  
6 settlements. ECF 4178, 4179, 4238, 4239. The time to appeal from those orders has passed and  
7 they are now final. The proposed allocation of fees and expenses in connection with the final  
8 global settlement (tribal claims against Altria) will be filed soon.

9 The Court can appropriately monitor the ongoing expenses charged against the settlements  
10 without formal reporting and auditing requirements. The Court has already authorized Co-Lead  
11 Counsel to identify and pay significant common benefit costs from the CMO 5(A) cost account.  
12 ECF 4239. And any future incurred held costs can be reported to Co-Lead Counsel, who will  
13 report any approved costs to the Court as part of Fee Committee reimbursement requests.

14 Accordingly, Plaintiffs request the Court enter the attached proposed order, which would  
15 do the following:

- 16 - Eliminate the ongoing requirement of reporting common benefit time.
- 17 - Require that any incurred held costs be reported to Co-Lead Counsel on a monthly  
18 basis.
- 19 - Assign Co-Lead Counsel, rather than Judge Andler, the responsibility to audit reported  
20 held costs before they are submitted to the Court for possible reimbursement.

21 The remaining provisions of the relevant orders – including the standards for compensable  
22 expenses in CMO 5, the holdback provisions of CMO 5(A), and Judge Andler’s role in resolving  
23 common-benefit-related disputes – shall remain in force.

#### 23 **IV. CONCLUSION**

24 Plaintiffs respectfully request that the Court modify CMO 5, CMO 5(A), and the Order  
25 Appointing Common Benefit Special Master as provided for in the attached proposed order.

1 Dated: September 25, 2024

Respectfully submitted,

2 By: /s/ Sarah R. London

3 Sarah R. London

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26 *Co-Lead Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 25, 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will automatically send notification of the filing to all counsel of record.

By: /s/ Sarah R. London  
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